

In re) Fair Hearing No. 21,082
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Appeal of)

The petitioner appeals the decision of the Department for Children and Families, Health Access Eligibility Unit (HAEU) denying his application for VHAP benefits. The issue is whether the petitioner's income exceeds the program maximum.

1. The petitioner is a single individual who is self-employed. He owns and operates two businesses, a beef cattle farm and a utility line clearing business. Following his application for VHAP on August 6, 2007, the Department sent the petitioner a notice on August 10 finding him ineligible for VHAP benefits due to excess income. However, the petitioner was found eligible for the Healthy Vermonters Program as of that date.

2. The main issue in this matter is whether net losses from the petitioner's farm businesses can be used to offset the net income of his other business. Based on 2006 income

tax filings provided by the petitioner, the Department in its decision determined that the petitioner's countable income from his line clearing business was \$2,625.16 a month, without allowing depreciation.

3. However, the petitioner also claimed a net loss on his farming business in 2006 of \$20,686, including depreciation. The Department did not count any income from this business as available to the petitioner, but it did not deduct any of this business's losses from the net income reported on his profitable business.

4. At status conferences held on September 26, October 17, and November 30, 2007,¹ the petitioner did not dispute the Department's *calculations* of his income as reported on his 2006 taxes. His dispute was a legal one concerning whether depreciation and offsetting farm business losses should be factored into the determination of his countable income for VHAP.

ORDER

The Department's decision is affirmed.

¹ Continuances were granted to the petitioner to allow him to attempt to obtain legal counsel, which he was unable to do.

REASONS

Under the VHAP regulations, all earned income, except a \$90 disregard for each earner, is included as countable income for eligibility. Income from self-employment is determined by deducting business expenses from gross receipts. W.A.M. §§ 4001.81(a)-(e). The regulations specifically provide that "depreciation" is not a countable business expense. W.A.M. § 4001.81(d)(4). The current VHAP income maximum for a one-person household is \$1,277 a month. There is no dispute that the petitioner's income from his line clearing business is well in excess of this amount.

The regulations provide only that "business expenses (self-employment only). . .are deducted from gross earned income". W.A.M. § 4001.81(c). Although the regulations are not more explicit on this point, as a matter of "procedure" the Department does not allow net self-employment losses from one or more businesses to offset other self-employment business gains. P.P.&D. Memo, Facing Page P-2122(B)(4), 3/7/95.² As the Board recently noted in Fair Hearing No. 20,914, inasmuch as this policy does not appear arbitrary, is

² This is consistent with the policies under Medicaid, RUFA, and Food Stamps. (See W.A.M. §§ M352, 2253.2, and 273.11(a), respectively, although a specific exception for farmers is made under Food Stamps.)

not irrational, and is not plainly inconsistent with the regulations, it must be upheld.

In light of the above, the Board is bound to affirm the Department's decision in this matter. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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